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Senate

Class Action Fairness Act 2003 (cont.)

Mr. CARPER. Mr. President, I thank the Senator for yielding. This is an important vote. I think in some ways this may be the most important vote we have cast in the 2½ years I have been here. I want to speak to Democrats first and then to Republicans. I suggest to my colleagues, my Democrat friends, why it is important for us to vote for the motion to proceed to take up this bill and to improve this legislation before we end up voting for it and sending it to conference.

First, I say to my Democrat colleagues, the status quo is not acceptable. We cannot feel good about the system of justice which exists today. There are many who disparage the trial bar, but I will say a kind word toward the efforts of many members of the trial bar. They do important work. They make sure when the little people are damaged or hurt that there is a way for them to have their grievances addressed, and when people are harmed to be compensated. That is important. It is important we preserve that right.

The system that has evolved over the last 200 years with the class actions, and what I think everyone regards as venue shopping too often between different State courts and the Federal courts, is a system that is just out of balance today. We can do better than this. It is important that we do better than this.

I want to go back and talk about the evolution of the legislation. When this bill was first introduced and talked about in the 105th Congress, there were a lot of people who thought that class action reform ought to be tort reform; that we ought to put caps on attorney's fees, caps on pain and suffering, caps on punitive damages, dismember joint and several liability. That is what a lot of people thought we ought to do 6, 7, 8 years ago. This legislation does not look like that at all. This is a modest, measured approach to fixing what I believe is a real problem.

I am not going to get into the weeds and talk about one aspect of the bill or the other. Some concerns have been raised about it. Some are legitimate, some are not. I say to my colleagues, particularly Democrats, the bill is not perfect. This bill can be improved. If it is not perfect, make it better. We can make this bill better. In the end, in order for us to have the opportunity to make this bill better, we have to move to the bill. We have to vote affirmatively for the motion to proceed. If we do that, we will have the opportunity for me to offer amendments, as well as other colleagues to whom I have talked on our side. A number of our colleagues have very good ideas for amendments. And I invite not only Democrats to support them but our Republican friends as well.

Republican leadership has indicated in a number of these instances they will support the amendments that are being prepared to be offered.

Back to my Democrats, as the minority we have three bites out of this apple to protect our position as the minority. One, we can filibuster and not vote for the motion to proceed. That is one protection. The second protection comes when we reach cloture on the bill and the decision comes do we actually vote on the bill, do we go to cloture. That is a second bite out of the apple. The third bite out of the apple is if there is a conference report between the House and the Senate, and the conference report comes back, and the Republicans have not acted in good faith, the majority has not acted in good faith, we have a third bite out of the apple. I believe we have those protections down the road and especially the second, on the motion to proceed.

I say straight out to our Republican friends, if we approve the motion to proceed today, we actually get to the bill today, and have the opportunity in the next days and week to offer amendments, if my Republican friends do not act in good faith—and I believe they will—but if they do not act in good faith, not only will I oppose cloture on the bill, I will help lead a fight against cloture.

I want us to be able to offer our amendments. I want to see a lot of those amendments adopted. If that happens, we can improve this bill further and then go to conference further down the line.

The last thing I want to say, in my view, there is more at stake than the motion to proceed, and I have suggested this to Majority Leader Frist. What is at stake is whether we are going to be able to work

together on a difficult and contentious issue; whether or not in this instance we are going to be able to maybe take what could be a very good experience, very positive experience of walking together across party lines on a tough issue, and maybe apply that on other difficult issues we face.

So there is a responsibility on both sides: for us as Democrats to offer reasonable amendments, to join in good faith in the debate, but also for our Republican colleagues to support those good amendments and act in good faith on their own. If they and we act in good faith, we could end up with good policy, which is what makes good politics. That is the potential. It is important we all realize that.